

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

FILED

May 16, 1997

Cecil W. Crowson
Appellate Court Clerk

EDDIE BRYANT,)	
)	MONTGOMERY CHANCERY
Plaintiff/Appellee)	
)	NO. 01S01-9611-CH-00231
v.)	
)	HON. ALEX W. DARNELL,
OPRYLAND U.S.A. INC. and)	CHANCELLOR
CONTINENTAL INSURANCE)	
COMPANY)	
)	Trial Court Number
Defendants/Appellants.)	92-71-132

For the Appellant:

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For the Appellees:

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MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Justice
William H. Inman, Senior Judge
William S. Russell, Special Judge

AFFIRMED AS MODIFIED

DROWOTA, J.

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendants in this appeal contend that the Chancellor's award of benefits to the plaintiff on the basis of a percentage to the body as a whole was error in light of the proof which established injuries only to both of plaintiff's arms which are scheduled members. The panel concludes that the award of benefits on the basis of sixty percent to the body as a whole should be modified to provide for an award of sixty percent to both arms. Tenn. Code Ann. § 50-6-207(3)(A)(ii)(w) (1996 Supp.) The judgment of the trial court is therefore affirmed as modified.

The plaintiff, Eddie Bryant, was thirty-six years old at the time of trial. Following his graduation from high school, Bryant served three years in the Navy and received training as a mechanic in diesel repair and in boiler repair. He completed three different training courses at Gravely Equipment, Briggs Equipment School and Echo Power Equipment. Subsequent to his discharge from the Navy, Bryant began working for the defendant Opryland as a mechanic in the horticulture department. Although Bryant was also in charge of the trash crew and performed some tree trimming, his primary job was that of mechanic.

In 1992, Bryant began dropping tools and experiencing numbness in his hands. Bryant first saw Dr. Steven Salyers, a medical doctor who specializes in orthopedics, on September 18, 1992. Based upon testing and examination of Bryant, Dr. Salyers diagnosed Bryant as having carpal tunnel syndrome in his right hand. Initially, Dr. Salyers prescribed conservative treatment for Bryant, however, that treatment proved unsuccessful. On January 28, 1993, Dr. Salyers performed corrective release surgery on Bryant's right wrist. Bryant returned to work on light duty, but began experiencing pain and discomfort in his left hand. Electrodiagnostic studies done on March 12, 1993 revealed mild carpal tunnel syndrome. Dr. Salyers

performed corrective surgery on March 29, 1993. Following this surgery, Bryant underwent physical therapy and a work hardening program. Dr. Salyers opined that Bryant attained maximum medical improvement as to both arms in July of 1993. Although no specific restrictions were given, Dr. Salyers recommended that Bryant not do any work which requires repetitive gripping, repetitive wrist flexion, intensive keyboarding, sustained wrist flexion, or sustained gripping activities. Bryant did not return to work at Opyland following his second surgery, but has worked part-time at several other establishments including Cumberland Heights Utility District, where he was employed to read water meters, Sundial Tanning Salon, where he was employed to clean the tanning beds, and a miniature golf park, where he, with assistance from his wife, did mechanic work on the go-carts.

Dr. Salyers, testifying by deposition at trial, opined that as a result of the bilateral carpal tunnel syndrome and the corrective surgeries performed on each arm, Bryant has a five percent permanent anatomical impairment rating to each upper extremity. Dr. Salyers also opined that Bryant is not likely to return to work as a mechanic given his continuing complaints of pain and discomfort.

Bryant was referred by his lawyer to Dr. Lloyd A. Walwyn for an evaluation and permanent impairment rating. Bryant saw Dr. Walwyn once on August 24, 1993. Dr. Walwyn, also testifying by deposition at trial, opined that Bryant's symptoms indicated either carpal tunnel syndrome or residual neuropathy of the median nerves of his wrists from carpal tunnel syndrome. Dr. Walwyn also determined that Bryant had full range of motion in his arms and wrists and no muscle atrophy of either arm. Dr. Walwyn assigned a ten percent anatomical impairment to each upper extremity, which he said related to twelve percent permanent impairment to the body as a whole. Based upon the foregoing testimony and evidence, the trial court found that Bryant had a sixty percent permanent impairment to the body as a whole.

In workers' compensation cases, the scope of review on issues of fact is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e) (2) (1996 Supp.); Lollar v. Wal-Mart Stores, Inc., 767 S.W.2d 143 (Tenn. 1989). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by deposition, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the depositions, and the reviewing court may draw its own impression as to weight and credibility from the contents of the depositions. Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676-77 (Tenn. 1991); Landers v. Fireman's Fund, Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989).

As a general rule, permanent partial disability benefits based on an injury to a "scheduled member " are exclusively controlled by the schedule established by the General Assembly for that member or combination of members and may not properly be apportioned to the body as a whole. See Tenn. Code Ann. § 50-6-207(3)(A) (1996 Supp.); Thompson v. Leon Russell Enterprises, 834 S.W.2d 927, 929 (Tenn. 1992); Lock v. National Union Fire Ins. Co., 809 S.W.2d 483, 486 (Tenn. 1991); Reagan v. Tennessee Mun. League, 751 S.W.2d 842, 843 (Tenn. 1988). Of course, for purposes of this rule, the term "scheduled member" is limited to only those members, and combinations of members, provided for in the statutory framework. Id. Moreover, permanent disability resulting from an injury to a scheduled member may be apportioned to the body as a whole if the injury extends beyond the scheduled member and causes a permanent injury to an unscheduled portion of the body. Thompson, 834 S.W.2d at 929; Kerr v. Magic Chef, Inc., 793 S.W.2d 927 (Tenn. 1990); Smith v. Empire Pencil Co., 781 S.W.2d 833 (Tenn. 1989). However, the fact that an injury to a scheduled member can be converted, via the American

Medical Association Guidelines, to a percentage disability to the body as a whole provides no basis upon which to sustain an award to the body as a whole under the Tennessee Workers' Compensation Law. Thompson, 834 S.W.2d at 929; Reagan, 751 S.W.2d at 843-44.

Although Dr. Walwyn utilized the AMA Guidelines to convert his disability rating to a percentage of the body as a whole, the medical expert testimony in this case actually apportioned Bryant's permanent impairment to the "upper extremities." The medical proof leads to the conclusion that Bryant's permanent vocational disability is to both arms and is therefore a scheduled injury. See Tenn. Code Ann. § 50-6-207 (3)(A)(ii)(w) (1996 Supp.). Consequently, the Panel finds that the evidence preponderates against an award based on a percentage of disability to the body as a whole. The trial court's award of workers' compensation benefits based on sixty percent to the body as a whole is accordingly modified to provide for an award based on sixty percent to both arms. This award is appropriate in light of Bryant's testimony, as well as the medical proof, which indicate that Bryant will no longer be able to work as a mechanic, the only trade for which he has been specially trained. As modified, the judgment of the trial court is affirmed. Costs on appeal are taxed to the defendants, Opryland U.S.A. and the Continental Insurance Company.

Frank F. Drowota, III, Justice

CONCUR:

William H. Inman, Senior Judge

William S. Russell, Thayer, Special Judge

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EDDIE BRYANT,
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vs.

OPRYLAND U.S.A., INC. and
CONTINENTAL INSURANCE
COMPANY,

Defendants/Appellants

} MONTGOMERY CHANCERY
} No. 92-71-132 Below

} Hon. Alex W. Darnell,
} Chancellor

}
} No. 01S01-9611-CH-00231

} AFFIRMED AS MODIFIED.

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Defendants/Appellants and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on December 6, 2000.

PER CURIAM